

IN THE HIGH COURT OF JUDICATURE AT MUMBAI

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 1887 OF 2010

The Board of Management of the)

Bombay Properties of the Indian)

Institute of Science, through its)

Secretary, having its office at Candy)

House, Flat No.3, 1st Floor, Mandlik)

Road, Colaba, Mumbai 400 001.)... .. Petitioner. Versus

1) The Central Information)

Commission, having its office at)

Club Building, Opposite Ber Sarai)

Market, Old JNU Campus,)

New Delhi 110 067.)

2) The Information Commissioner,)

having his office at Room No.415)

4th Floor, Block IV, Old JNU)

Campus, New Delhi 110 066.)

3) Kayumars F. Mehta of Mumbai)

Indian Inhabitant, residing at 1,)

Ashley House, Opp. Colaba Post)

Office, Colaba, Mumbai)

400 005.)

4) The Union of India,)

having its office of Aaykar)

Bhavan, 2nd Floor, New Marine)

Lines, Mumbai 400 020.)... .. Respondents.

Mr. Aspi Chinoy with Mr. Kevic Setalwad i/by

M/s. Harish Joshi & Co., for the Petitioner.

Mr. A. A. Kumbhakoni with Ms.Srikrishnan i/by

M/s. Kanga & Co., for Respondent No.3.

Mrs. Poornima Awasthi for Respondent No.4 Union of India.

CORAM : B. H. MARLAPALLE &

A. A. SAYED, JJ.

RESERVED ON :

24TH SEPTEMBER, 2010.

PRONOUNCED ON: 11TH OCTOBER, 2010 JUDGMENT (Per B. H. MARLAPALLE, J.):

This petition filed under Articles 226 and 227 of the Constitution of India impugns the order dated 15th February, 2010 passed by the Central Information Commissioner (for short "the CIC") holding that the petitioner is a public authority as defined under Section 2(h)(d) of the Right to Information Act, 2005 (for short "the Act") and directing the petitioner to provide the complete information to the present respondent No.3 before 5th March, 2010. This petition was filed on 4th March, 2010 and appeared before

the Court for the first time on 17th March, 2010 and the Court had not granted stay to the impugned order.

2. The petitioner is the Board of Management of the Mumbai properties of the Indian Institute of Science at Bangalore (for short "the Institute") and the said Institute is an autonomous body under the Ministry of Human Resource Development, Government of India and is also a deemed University and financed by the Government of India. Late Shri Jamsetjee Nusserwanjee Tata had submitted a proposal to the Government of India for funding an Institute of Research in India and endowing such institute with immovable properties in the City of Mumbai. Accordingly, on 27th May, 1909 the Secretary to the Government of India passed a Vesting Order under Sections 4 and 7 of the Charitable Endowments Act, 1890 (for short "the Endowments Act") and the properties as listed in Schedule "A" to the said Vesting Order came to be vested in the treasurer of the Charitable Endowments for the Territories subject to the Government of Mumbai. By a subsequent order dated 13th November, 1941 passed by the Government of India through the Finance Department all the properties vested in the Treasurer for Charitable Endowments for any Province came to be vested under Section 12 of the Endowments Act in the Treasurer of Charitable Endowments for India. By the subsequent

Notification dated 22nd May, 1967 the Government of India through the Ministry of Education and upon the application of the Council of the Institute and its Board of Management and in exercise of the powers conferred under Section 5 of the Endowments Act and with the concurrence of the Council and the Board of Management and the joint consent of the Trustees of the Public Charities known as Sir Dorabji Tata Trust and the Sir Ratan Tata Trust and with the approval of the Visitor of the said Institute, declared a Scheme for the administration and management of the properties and funds of the said Institute and as set out in Schedule "H" to the Vesting Order dated 27th May, 1909 and thereby revised the Scheme as set forth in the Vesting Order dated 27th May, 1909. Thus, the management of the properties which were vested with the Treasurer for Endowments of the Central Government and covered by the Order dated 27th May, 1909 became a part of the Scheme dated 22nd May, 1967.

3. Respondent No.3, by his application dated 24th September, 2007 addressed to the Public Information Officer of the Institute, sought the following informations in respect of 2 flats situated in Hamton Court and 1 flat in Jenkins House at Mumbai:

"a) The names of present tenants since there was a proposal to transfer the flats to the defence forces.

b) Whether Edwart Investment was authorized by IISc to negotiate on their behalf.

c) Whether IISc is a charitable trust and does it fall under charitable commissioner of UGC.

d) Whether permission had been taken to allot flats to the defence forces.

e) The total transaction since the market value of the flats were estimated to be around Rs.5 crores.

f) The benefits to IISc in the transfer of the flats. g) Whether Edwart Investment control IISc, Bangalore. h) Act or legislation under which Edwart Investment has control over IISc Bangalore.

I) The person responsible for the loss of revenue. j) Whether any bids/offers were invited to determine market value of the flats.

k) All the correspondence regarding between IISc and Edwart Investment."

The Public Information Officer by his reply dated 28th November, 2007 rejected the said application. Respondent No.3 filed an appeal before the First Appellate Authority at the Institute which was rejected and therefore an appeal was preferred before the CIC (Respondent No.2). By his order dated 18th December, 2008 the CIC disposed off the appeal and held that the petitioner Board is a public authority and is covered by the Act. The petitioner Board was directed to reply the application on merits. Thereafter, the Public Information Officer of the Institute vide his order dated 22nd December, 2008 forwarded the said RTI application submitted by respondent No.3 to the petitioner Board. It was further stated that if the Board so wished, it could deny the information but it would give reasons for such denial as per the provisions of the Act. On 16th January, 2009 the Secretary of the petitioner informed respondent No.3 that the Board was not given an opportunity before the CIC and that the Board was not a public authority and even if it is held to be a public authority, the information sought by respondent No.3 was personal in nature and therefore its disclosure would cause unwarranted invasion of privacy. Respondent No.3 filed appeals on 21st February, 2009

and 23rd March, 2009 with the Board. Both the appeals were rejected by the orders dated 19th March, 2009 and 9th April, 2009 by informing respondent No.3 that the Board was not a public authority under Section 2(h) of the Act. Thus, respondent No.3 approached respondent No.2 in the second round by filing a Second Appeal which has been decided by the impugned order. On 12th January, 2010 respondent No.2 passed the first order and held that the petitioner Board is the public authority within the meaning of Section 2(h)(d) of the Act and on 15th February, 2010 it passed the second Order directing the Board to furnish the information as sought by respondent No.3.

4. Mr. Chinoy, the learned Senior Counsel appearing for the petitioner, at the first instance submitted that the management of the subject property covered by the Vesting Order dated 27th May, 1909 remained with the petitioner Board and continues to remain so though it was vested with the Treasurer. It was further contended that the Board created by the Vesting Order of 27th May, 1909 cannot be termed to be a public authority as defined under Section 2(h)(d) of the Act and the reasoning set out by the impugned order in that regard is patently erroneous. It was contended that the properties under the management of the petitioner Board are not the properties of the Institute and though the Institute may be a public authority as defined under the Act, the petitioner Board cannot be covered within the ambit of the said term. As per Mr. Chinoy, the notification issued by the Government of India on 22nd May, 1967 cannot replace the Scheme as formulated by the Vesting Order dated 27th May, 1909. It was also urged that the properties have been vested with the Treasurer of Endowments, they continue to be under the management of the Board and two or more government officers being the members of the Board does not, that by itself, bring it within realm of a public authority as defined under Section 2(h)(d) of the Act.

5. Section 5 of the Endowments Act states that where a property is held or is to be applied in trust for charitable purpose, the appropriate Government may on application made and subject to the provisions of the Act, order by notification published in the Official Gazette, that the property be vested in the treasurer of Charitable Endowments on such terms as to the application of the property. SubSection (4) of the said Section states that an order of Vesting property shall not require or be deemed to require the Treasurer to administer it or impose or deemed to impose upon him the duty of a trustee with respect to the administration of the property. As per Section 5 of the Endowments Act, the appropriate Government has the power, with the concurrence of the person or persons making the application to settle a scheme for the administration

of the property which has been vested in the Treasurer of Charitable Endowments. As per subSection 2 of Section 5 of the Endowments Act such a scheme made under Section 5(1) can be modified or can be substituted by another Scheme and under sub Section (3), the Scheme settled, modified or substituted shall come into operation on a day to be appointed by the appropriate Government in that behalf and shall remain in force so long as the property to which it relates continues to be vested in the Treasurer of Charitable Endowments or until it is modified. It is clear that the first order dated 27th May, 1909 was passed under Section 4 thereby vesting the properties in the Treasurer of Charitable Endowments for Bombay Province and attached thereto was a scheme formulated for the administration of the property under Section 5(1) of the Endowments Act. The property was subsequently vested in the Treasurer of Charitable Endowments, Government of India by the order of 13th November, 1941 and finally the Scheme of 27th May, 1909 has been substituted by the Scheme notified by the Union of India on 22nd May, 1967. It is, therefore, necessary to consider the Scheme of 22nd May, 1967 and not the scheme of 27th May, 1909 for deciding the issue as to whether the petitioner Board is a public authority.

6. The preamble of the Act states that democracy requires an informed citizenry and transparency of information which are vital to its functioning and also to contain corruption and to hold Governments and their instrumentalities accountable to the governed. For setting out the practical regime of right to information for citizens to secure access to information under the control of public authorities, in order to promote transparency and accountability in the working of every public authority, the constitution of a Central Information Commission and State Information Commissions and for matters connected thereto the Act has been framed and brought into force. The definitions of certain terms as defined under Section 2 of the Act are as under:

"(f) "information" means any material in any form, including records, documents, memos, emails, opinions, advices, press releases, circulars, orders, logbooks, contracts, reports, papers, samples, models, data material held in any electronic form and information relating to any private body which can be accessed by a public authority under any other law for the time being in force.

(h) "public authority" means any authority or body or institution of selfgovernment established or constituted, (a) by or under the Constitution;

(b) by any other law made by Parliament;

(c) by any other law made by State Legislature; (d) by notification issued or order made by the appropriate Government, and includes any

(i) body owned, controlled or substantially financed; (ii) nonGovernment Organisation substantially financed, directly or indirectly by funds provided by the appropriate Government;

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(i) "record" includes

(i) any document, manuscript and file;

(ii) any microfilm, microfiche and facsimile copy of a document;

(iii) any reproduction of image or images embodied in such microfilm (whether enlarged or not); and

(iv) any other material produced by a computer or any other device;

(j) "right to information" means the right to information accessible under this Act, which is held by or under the control of any public authority and includes the right to (i) inspection of work, documents, records; (ii) taking notes, extracts, or certified copies of documents or records;

(iii) taking certified samples of material;

(iv) obtaining information in the form of diskettes, floppies, tapes, video cassettes or in any other electronic mode or through printouts where such information is stored in a computer or in any other device;

7. As per Section 3 of the Act, subject to the provisions therein, all citizens shall have the right to information. Section 6(1) of the Act states that a person, who desires to obtain any information under the Act, shall make a request in writing or through electronic means specifying the particulars of the information sought by him/her. Sub Section (2) of Section 6 of the Act states that an applicant making request for information shall not

be required to give any reason for requesting the information or any other personal details except those that may be necessary for contacting him. It is thus clear that while entertaining an application for information made under the Act, the locus standi or the intention of the applicant cannot be questioned and is required to furnish all the information sought by him except what has been exempted under Section 8 therein.

8. The CIC has noted the arguments advanced by both the parties i.e. the petitioner and respondent No.3 and has stated that the Vesting Order dated 27th May, 1909 has been replaced by a new scheme published by the Notification dated 22nd May, 1967 by the Union of India and the said notification stipulated that the revised scheme came into effect from 22nd May, 1967 under Section 5 of the Endowments Act. Respondent No.2 further noted that in para 2.1 of the said Scheme, the Board of Management has been constituted and two out of the 4 members of the Board are Government Officers and one is nominated by the Government of India and thus 3 of the 4 members of the Board owe their position on the Board by the nomination of the Government of India. It also noted that the Scheme notified on 22nd May, 1967 has established the petitioner Board and therefore it is a public authority under Section 2(h)(d) of the Act i.e. the Board has been established/constituted by a Notification issued by the Government of India. In our opinion, this reasoning of the CIC cannot be faulted with having regard to the Scheme notified on 22nd May, 1967, which has substituted the original vesting order dated 27th May, 1909.

9. The arguments advanced by Mr. Chinoy that the said scheme being contrary to the earlier scheme framed when the Vesting Order dated 27th May, 1909 was passed is unsustainable. The Notification dated 22nd May, 1967 clearly states that the Settlor had consented. It was with the joint consent of the Trustees of the Public Charities known as Sir Dorabji Tata Trust and the Sir Ratan Tata Trust. Clause 12.1 of the said Scheme deals with the Board of Management and it consists of the following members, namely:

"(a) Collector of Bombay for the time being or such other officer as the Government of India may appoint; (b) One representative of the Trustees for the time being of the public charity created by the late Sir Dorab Tata, known as the Sir Dorabji Tata Trust, and the Trustees for the time being of the public charity created by the late Sir Ratan Tata, known as the Sir Ratan Tata Trust; (c) One resident of Bombay to be nominated by the Government of India;

(d) Director of the Indian Institute of Science, Bangalore (ex officio) or his representative."

The powers of the Board of Management have been set out in clause 12.2 of the Scheme. We, therefore, agree with the view taken by respondent No.2 that the petitioner Board has been established/created by the Scheme framed under the Notification dated 22nd May, 1967 by the Government of India and it is a public authority, as defined under Section 2(h)(d) of the Act and thus the first part of the impugned order deserves to be confirmed.

10. So far as the directions given to provide the information sought by respondent No.3, the CIC noted that the RTI application was filed by respondent No.3 in the year 2007 and inspite of the lapse of over 2 years period the said information was not provided. It referred to the scheme of Section 7 of the Act which stipulates that the information has to be provided within 30 days on the receipt of the request. We have also noted the scheme of Section 6 of the Act. We do not find any error in the directions issued by the CIC to provide the information sought by respondent No.3. More so, when the CIC noted that denial of information under the Act can only be based on the assumption provided under Section 8(1) of the Act and the onus to prove that onus would be justified has been left on the PRO as per Section 19(4) of the Act. The refusal to give the information by the petitioner was solely on the ground that it was not a public authority within the meaning of the Act. The CIC also applied its mind to the provisions of Section 8(1) of the Act and noted that none of the said exemptions are applicable in the instant case and therefore issued directions to provide the information sought for. Hence no fault could be found even on the second part of the impugned order as well.

11. In the premises, this petition fails at the threshold and the same is hereby rejected.

(A. A. SAYED, J.) (B. H. MARLAPALLE, J.) 16 WP1887 IN THE HIGH COURT OF
JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 1887 OF 2010

RESERVED ON

: 24TH SEPTEMBER, 2010.

PRONOUNCED ON:

Transcript of JUDGMENT/ORDER

The Hon'ble Shri Justice B. H. Marlapalle

The Hon'ble Shri Justice A. A. Sayed